

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JENNIFER WILDER

Plaintiff,

v.

9:19-cv-0130 (BKS/ATB)

ALBANY COUNTY, et al.,

Defendants.

Appearances:

For Plaintiff:

Michael Diederich, Jr.
361 Route 210
Stony Point, New York 10980

For Defendants:

Daniel C. Lynch
Albany County Attorney
Michael L. Goldstein, Of Counsel
112 State Street
Albany, New York, 12207

Hon. Brenda K. Sannes, United States District Judge:

DECISION AND ORDER

On March 16, 2020, defendants filed a statement noting the death of Plaintiff Jennifer Wilder under Rule 25(a)(1) of the Federal Rules of Civil Procedure, stating that they were notified of plaintiff's death on or about March 4, 2020, by counsel for plaintiff. (Dkt. No. 21). According to defendants' letter, defendants served the statement of death on plaintiff's attorney via ECF and regular mail on March 16, 2020. (Dkt. No. 21).

Rule 25 states, in relevant part:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the

decendent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25(a)(1). As more than 90 days have passed since defendants' filing of the suggestion of death and service of a copy on plaintiff's attorney and as no motion for substitution has been made, the complaint (Dkt. No. 1) is dismissed without prejudice. *See Brown v. New York State Dep't of Corr. Servs.*, No. 03-cv-175S, 2004 WL 2473311, at *1, 2004 U.S. Dist. LEXIS 32172, at *4 (W.D.N.Y. Nov. 2, 2004) (finding dismissal appropriate where the "Defendants properly served the Suggestion of Death on Plaintiff at his last known address at the Orleans Correctional Facility . . . more than ninety days ha[d] passed since such service" and no motion for substitution had been made).


It is therefore

ORDERED that in accordance with Rule 25(a)(1) the complaint (Dkt. No. 1) is **DISMISSED without prejudice**; and it is further

ORDERED that the Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: June 23, 2020


Brenda K. Sannes
U.S. District Judge